

**STATEMENT OF NHL COMMISSIONER GARY BETTMAN REGARDING
H.R. 1862, THE DRUG FREE SPORTS ACT OF 2005**

On behalf of the National Hockey League (“NHL”), and in response to the request of the Subcommittee on Commerce, Trade and Consumer Protection (hereinafter the “Subcommittee”), this shall constitute my written statement regarding H.R. 1862, the Drug Free Sports Act of 2005. At the outset, I would like to say that the NHL appreciates being afforded the opportunity to provide the Subcommittee with our comments and feedback regarding the proposed legislation, and undertakes to cooperate in any way it can in the effort to eliminate the use of performance-enhancing drugs in professional and amateur athletics.

The NHL’s views on H.R. 1862, the Drug Free Sports Act of 2005, are based upon the NHL’s practical experience over the past ten years in administering the NHL/NHLPA Substance Abuse and Behavioral Health Program (the “NHL/NHLPA Program” or the “Program”), as well as the NHL’s extensive role in the development and administration of drug testing programs in connection with various international competitions involving NHL players over the past several years. A brief history of the NHL/NHLPA Program and our experience to date in the testing of NHL players for the use of performance-enhancing drugs may be instructive for the Subcommittee.

NHL/NHLPA Substance Abuse and Behavioral Health Program

In 1995, and in conjunction with the parties’ agreement on the now recently expired collective bargaining agreement (“CBA”), the NHL and the National Hockey League Players’ Association (the “NHLPA”) jointly negotiated, created, and agreed to

implement the NHL/NHLPA Program (Attachment 1 hereto). The Program was designed to be a “comprehensive effort to address substance abuse among NHL players and their families, to treat those with a substance abuse problem in a confidential, fair and effective way, and to deter such abuse in the future.” (Attachment 1, Section 1) In order to accomplish these goals, the Program contemplates and has employed extensive education, counseling, inpatient and outpatient treatment, follow-up care, and where appropriate, punitive sanctions, up to and including permanent suspension from play.

Pursuant to the terms of the Program, players who are suspected of having a substance abuse problem, which could include a problem associated with the use of performance-enhancing drugs, can be referred for participation in the NHL/NHLPA Program. (Players can also refer themselves into the Program.) A player who has been referred to the Program is evaluated by the Program Doctors¹, who then determine what, if any, treatment is required for the player. The Program expressly provides that:

as part of treatment and follow-up care, players may be required to undergo periodic substance testing at a frequency and on a schedule to be determined by the doctors. Such testing may take place both in-season and during the off-season.

(Attachment 1, Section 3D)

The Program also incorporates an important educational component, which mandates that the Program Doctors:

¹ The League and the NHLPA retained Dr. Dave Lewis of Visions Residential Treatment Program, California, and Dr. Brian Shaw of Toronto Hospital and the Hospital for Sick Children, to direct and oversee the Program. Drs. Lewis and Shaw have extensive experience in treating substance abuse, including among professional athletes, and have served as the Program Doctors since the inception of the Program in 1995.

meet with the players on each team at least once each year to review issues relating to substance abuse. . . . The education program will include instruction on the risks of alcohol and drug use, how a player can help teammates who may have a substance abuse problem, how to deal with high risk situations involving alcohol and drugs, and how a player and his family can obtain assistance under this program.

(Attachment I, Section 3) This provision reflects the comprehensive nature of the Program, and the belief of the NHL and the NHLPA that education regarding drugs, including performance-enhancing drugs, is one of the most effective tools in preventing substance abuse. Pursuant to our mandate, and in response to the issues that have surfaced in professional sports generally over the past several years, the Program Doctors developed educational materials specifically relating to the dangers of steroid use and presented these materials to the players on at least four different occasions in the recent past. A representative sample of the educational materials prepared and presented to the players regarding the use of steroids is provided as Attachment II.

As a historical matter, the players who have been treated under the Program have exhibited problems associated with alcohol and/or “recreational” drug use, rather than steroid (or steroid precursor) or performance-enhancing use. The experience of our Program in this regard is not surprising when one considers that primary of the alleged benefits of steroid use – significant large muscle development – generally is not consistent with playing hockey at the highest levels of the sport, and the resulting bulkiness attributable to steroid use simply is not a desired characteristic of skilled NHL

players.² Nevertheless, in the event NHL players were to exhibit symptoms associated with abuse of performance-enhancing drugs, the Program, even as currently designed and written, is broad enough in scope to provide treatment (and if appropriate, discipline) for such players and the Program Doctors are empowered to intervene on that person in any manner they feel is appropriate.

In addition, the Program Doctors have, over the ten years they have administered the Program, developed relationships and gained the trust of those who are in the best position to know what players may be using – i.e., Team Physicians and Team Athletic Trainers. In the event the Program Doctors were to suspect an emerging problem among NHL players with the use of performance-enhancing drugs, or were to otherwise be advised of such concerns by the Team Physicians or Team Athletic Trainers, pursuant to the express terms of the Program, the Program Doctors are empowered to develop even more focused and extensive educational and training programs relating to the risks and other concerns associated with performance-enhancing drugs. Moreover, heightened awareness at the Club level would no doubt translate to performance-enhancing drug-related referrals to the Program.

Drug Testing of NHL Players in International Hockey Competitions

The frequent and consistent participation of NHL players in international competitions, and the drug testing NHL players undergo in connection therewith, objectively supports our view that the use of performance-enhancing drugs by NHL players is negligible, to the extent it exists at all. Over the past ten years, NHL players

² Our belief that steroid use is not desired by or prevalent among skilled hockey players is seemingly confirmed by the fact that there have been only eight positive results in the approximately 3,100 tests of NHL and non-NHL players administered at the World Hockey Championships (conducted by the International Ice Hockey Federation (“IIHF”)) since 1993/94.

have represented their nations of origin annually in connection with the IIHF World Championships, twice in Olympic competitions in 1998 and 2002, and just this past year in the 2004 World Cup of Hockey, which the NHL and the NHLPA organized and sponsored. In connection with such international play, the NHL and its players are held to and abide by the strict international standards of the World Anti-Doping Agency (“WADA”), which have been adopted by the IIHF.

In the past ten years, of the nearly 1,000 NHL players who have participated in the IIHF World Championships, the Olympics, and World Cup of Hockey competitions, and were subject to drug testing in connection therewith, we are aware of only three positive tests for performance-enhancing drugs.³ Of the three, one of the players tested positive for salbutamol, a drug that is also used for asthma as a Proventil inhaler, and which may be used with a Therapeutic Use Exemption. A second player tested positive for tramadol, a substance that is designated as an “allowed narcotic” (i.e. a prescribed painkiller). The third player established a “mistaken use” defense in connection with his use of over-the-counter nutritional supplements.

NHL/NHLPA Intentions Regarding Future Testing

For Performance-Enhancing Drugs

Despite our conviction that, as a general matter, performance-enhancing drugs are not an issue in the NHL, the NHL and its Players’ Association recognize the need for a modernized drug testing and doping control policy that will be specifically directed to the

³ In connection with international competitions in which NHL players have participated over the past ten years, the Program Doctors, along with the USOC, administered the pre-competition drug testing for the Olympics, and the IIHF and the IOC administered the in-competition testing. The Program Doctors administered the out-of-competition and in-competition testing for the World Cup of Hockey. The IIHF also administered the in-competition testing for the World Championships. With respect to the tests administered by the IIHF, the IOC and the USOC, it is our understanding that no NHL player had a positive test result for performance-enhancing drugs; however, we do not have access to specific data or testing results.

prevention of performance-enhancing drugs in our sport. Fans in particular, and the public at large, are entitled -- and deserve -- to have confidence that our games are being played in a steroid-free environment. Accordingly, on a going-forward basis, and in conjunction with a new CBA, the NHL and the NHLPA anticipate putting into place a new Program that will feature, in addition to enhanced and focused educational efforts, frequent and random no-notice testing coupled with immediate and mandatory discipline for the proven use of performance-enhancing drugs. Although the precise details of the new Program directed specifically toward the prevention of performance-enhancing drug use have not yet been finalized, on the basis of our communications to date, the NHL is satisfied that the NHLPA shares our desire and commitment to design and implement a Program to deal effectively and meaningfully with these serious issues.

H.R. 1862, The Drug Free Sports Act of 2005

The National Hockey League has reviewed the proposed Drug Free Sports Act of 2005 and, as stated above, is supportive of a program featuring mandatory testing and discipline imposed in connection with an athlete's use of performance-enhancing drugs. The NHL remains of the belief that, given the commitment the NHL shares with the NHLPA to implement a mandatory and effective Program to eradicate the use of all performance-enhancing drugs from our game, we do not see a need for the proposed legislation as it would relate to the NHL. However, should Congress decide to proceed in this area and legislate along the lines that this proposed legislation would contemplate, the NHL's specific comments regarding the provisions of the proposed legislation are directed toward the rules requiring mandatory testing for athletes (Section 3), and the provision regarding exemptions (Section 4), and are as follows:

- Section 3(1) of the proposed legislation provides for “each athlete [to be] tested a minimum of once each year that such athlete is participating in the activities organized by the professional sports association.” It is our recommendation, at least with respect to NHL players, that each athlete be tested a minimum of two (2) times per season.

- Section 3(1) further provides that the “tests shall be conducted at random throughout the entire year and the athlete shall not be notified in advance of the test.” With respect to NHL players, we would recommend that each team’s entire roster of players be tested at the same time during the NHL season, on a no-notice basis. (As a technical matter, no-notice team-wide testing would not be considered “random”.) The players could also be subject to random testing during the off-season.

- Section 3(2) provides that each athlete shall be tested for the substances:
 - (A) determined by the World Anti-Doping Agency to be prohibited substances; and
 - (B) determined by the Secretary to be performance-enhancing substances for which testing is reasonable and practicable.

As you may know, the World Anti-Doping Agency has two separate lists of prohibited substances: an out-of-competition list and an in-competition list. The in-competition list tests for many categories of drugs that are not identified on the out-of-competition list, including marijuana and stimulants that the NHL believes should be included in a drug-testing program for NHL players. For this reason, the NHL favors application of the in-competition list for NHL players.

With respect to Section 3(2)(B), we look forward to obtaining a better understanding from the Secretary as to what the provision is intended to cover so that we can provide further comments, if any.

- Section 3(3) of the proposed legislation provides that “tests shall be administered by an independent party not affiliated with the professional sports association.” We agree, and in fact, our Program currently operates in accordance with this approach, as has the testing performed in connection with the participation of NHL athletes in international competitions, as described above.

- Section 3(4) of the proposed legislation provides that a positive test shall result in the imposition of a suspension and public disclosure of the test result, subject to the determination made pursuant to an appeal. The NHL agrees that it would be appropriate to issue a suspension and publicly disclose the name of an athlete who has tested positive for the use of a performance-enhancing drug, but believe that prior to such suspension and disclosure -- and even in the event an appeal is not filed -- it would be prudent to implement a process that would require a medical review officer to contact the player who tested positive to determine whether there is an legitimate medical explanation⁴ for the player’s use of the banned substance. If so, and the player has a proper medical prescription authorizing the use of the substance, the positive test results should be considered cancelled and penalties should not be imposed. If, however, a legitimate medical explanation for the player’s use of the banned substance does not exist, it would then be appropriate to impose a suspension and make the positive test results public, in addition to providing counseling and treatment.

⁴ See 49 C.F.R. §40.137 (2003) (Department of Transportation Procedures for Transportation Workplace Drug Testing Programs).

- Section 3(4)(A) of the proposed legislation provides for a minimum suspension of two (2) years for an athlete who tests positive, and for the permanent suspension for an athlete who tests positive more than once. The NHL agrees that a player who tests positive for performance-enhancing drugs should be subject to a significant punishment, and further agrees that progressive discipline should be imposed for a player who tests positive more than once. We would, however, like to further discuss with the Subcommittee the merits associated with the specific proposal to impose a two-year ban for a first-time offender and a lifetime ban for a second-time offender. We do, however, agree, that at some point in time a lifetime ban would be an appropriate sanction for a repeat offender.

- Section 3(5) of the proposed legislation provides for an internal appeals process. We agree this is a necessary component of any mandatory drug testing program.

- Section 4 of the proposed legislation provides that the

Secretary may exempt from the regulations promulgated pursuant to section 3 any professional sports association that has previously adopted and implemented policies and procedure for testing athletes for prohibited substances that meet or exceed the requirements of such regulations.

The NHL notes that it may also be appropriate to issue an exemption for subsequently adopted policies, as long as they meet or exceed the requirements of the regulations.

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The public is entitled to have confidence in the integrity of competition in the game of hockey and in all professional sports, and to watch the exceptional athletes of today compete on a level playing field, free of the influence of performance-enhancing

drugs. Every professional athlete serves as a role model, and with that comes a corresponding responsibility to engage exclusively in conduct that will bring honor to himself, his team, or the game in which he earns his livelihood. For these reasons, we support the requirement that the NHL and the other professional sports leagues conduct mandatory testing on athletes for performance-enhancing drugs.